

Chief Justice's Court

Case :- WRIT - A No. - 9011 of 2024

Petitioner :- Devendra Kumar

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Damodar Singh, Devendra Vikram Singh

Counsel for Respondent :- A.S.G.I., Ishan Shishu, Rajiv Sharma

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

1. Impugned in the present proceedings at the instance of Devendra Kumar son of Late Hare Krishna Chaudhary (in short 'writ petitioner') is an order or the orders dated 06.12.2023 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad (in short 'Tribunal') in O.A. No. 116 of 2022 (Devendra Kumar Vs. Union of India & Others), whereby the challenge raised to the order dated 09.11.2021 of the Director (Administration and H R), Directorate of Administration & HR, Small and Medium Enterprises, Government of India, Mumbai denying compassionate appointment was rejected.

2. A joint statement has been made by learned counsels for the parties that they do not propose to file any further affidavits and the writ petition be decided on the basis of the documents available on record, thus, with the consent of the parties, the writ petition is being decided at the fresh stage.

3. The case of the writ petitioner who was original applicant before the Tribunal was that his father, Hare Krishna Chaudhary (since deceased) was working as an Assistant Development Officer (Bio Gas) in Khadi and Village Industries Commission at State office at Lucknow who along with his mother expired on 26.11.2002 leaving behind as legal heirs, three sisters, namely, Archana Chaudhary, Rachna Chaudhary and Shradha Chaudhary as well as the writ petitioner. At the time of the death of the father of the writ petitioner

Km. Rachna Chaudhary and Shradha Chaudhary along with the writ petitioner were minor and since Km. Archana Chaudhary being the elder sister was major so she applied for compassionate appointment on 22.07.2003, however, the Director (Administration) of the respondent organization passed an order dated 14.02.2005 observing that in terms of O.M. No. 14016/6/94-Est(D) dated 09.10.1998 of the DoPT, Government of India only 5% of the vacancies falling under direct recruitment quota in Group-C and D posts in a particular year are only to be filled by compassionate appointment and since the said vacancies were not available as on 31.12.2003, thus, the claim of the elder sister of the writ petitioner, Km. Archana Chaudhary was not acceded to. The writ petitioner claimed that he after possessing the qualification of B.Sc. as well as after pursuing diploma in Civil Engineering and attaining majority applied for compassionate appointment on 14.06.2010, after fulfilling the necessary formalities. On the said motion, the Director (B.T.) of the Khadi Village Industries, Mumbai proceeded to issue a communication dated 02.08.2010 mentioning therein that in absence of any vacancy, the writ petitioner cannot be offered appointment. As per the writ petitioner on 22.10.2017 an advertisement came to be published for filling up various Group-C and Group-D posts, the writ petitioner thereafter applied for compassionate appointment in Group-C posts under 5% quota earmarked under DoPT circulars on 21.07.2018. On 06/08.08.2018 a communication is stated to have been issued by the Director (Administration & HR) mentioning therein that the claim of the writ petitioner for compassionate appointment cannot be considered since the advertisement dated 22.10.2017 has been withdrawn and the case of the elder sister of the writ petitioner Km. Archana Chaudhary is pending for grant of compassionate appointment, however, the same would be offered in case, there is any vacancy in that regard. Another communication is also stated to have

been issued on 10.09.2018 under the signatures of the Director (Administration & HR). In the said communication it was also recited that the bar contained in the office order dated 05.03.2003 with respect to non-grant of compassionate appointment after three years post death of the deceased has been withdrawn. According to the writ petitioner on 29.05.2019, the Director (HR) issued a communication requiring the writ petitioner to submit certain documents of his claim for compassionate appointment. The writ petitioner claims to have submitted the same on 02.07.2019. It is asserted that an advertisement came to be published in the year 2019 for filling up several posts of Assistant (Village Industries) along with the other posts. The Assistant Director-I (Administration & HR) issued a communication dated 10.02.2020 requiring the writ petitioner to produce certain documents as sought for. The writ petitioner claims to have submitted those documents on 12.02.2020 and thereafter on 17.02.2020 a letter is stated to have been issued by the Deputy Director/Incharge to the Assistant Director-I forwarding the case of the writ petitioner for compassionate appointment. The writ petitioner against the non-consideration of his claim for compassionate appointment preferred a representation dated 01.03.2021 before the Chief Executive Officer, Khadi and Village Industries, Mumbai and being aggrieved against non-disposal of the same preferred O.A. No. 330/00716/2021 (Devendra Kumar Vs. Union of India & Others) which came to be disposed of by the Tribunal on 24.09.2021 requiring the Director (Administration and HR), second respondent herein to decide the representation of the writ petitioner dated 01.03.2021 within a period of eight weeks from the date of submission of the certified copy of the order. The claim set up by the writ petitioner came to be rejected by the Director (Administration & HR) on 09.11.2021.

4. Assailing the order dated 09.11.2021, the writ petitioner preferred O.A. No. 116 of 2022. The original application on contest came to be rejected by virtue of the order dated 06.12.2023.

5. Questioning the order dated 06.12.2023 of the Tribunal passed in O.A. No. 116 of 2022 as well as the order dated 09.11.2021 negating the claim of the writ petitioner for compassionate appointment, the writ petitioner has filed the present writ petition.

6. This Court entertained the writ petition on 09.07.2024 while seeking instructions from the respondents.

7. A counter affidavit dated 07.08.2024 and a supplementary counter affidavit dated 02.09.2024 on behalf of second and third respondent sworn by State Director, KVIC, Lucknow has been filed.

8. As noticed, the learned counsel for the writ petitioner does not propose to file any rejoinder affidavit to the same.

9. Sri Devendra Vikram Singh, learned counsel for the writ petitioner has sought to argue that the judgment and order of the Tribunal impugned in the present writ petition cannot be sustained for a single moment inasmuch as the Tribunal while negating the claim of the writ petitioner has misconstrued the entire controversy and has adopted the incorrect approach. Elaborating the said submission, it is being submitted that once it is not disputed that the father of the writ petitioner Hare Krishna (since deceased) died-in-harness while working as Assistant Director of Development Officer on 26.11.20002 and at that point of time the writ petitioner along with the two sisters were minor and the elder sister Ms. Archana Chaudhary applied for compassionate appointment on 22.07.2003 and on 14.02.2005 she was not accorded compassionate appointment on the ground that there was no vacancy available and the writ petitioner post attainment of majority and after possessing the necessary qualification applied on 14.06.2010 and on 10.09.2018 a communication came to be issued by

the Director (Administration & HR) that the claim of the elder sister of the writ petitioner Archana Chaudhary is pending consideration for compassionate appointment subject to availability of the vacancy and the bar contained in the office order dated 05.05.2003 that compassionate appointment is not liable to be granted after a period of three years of the death of the deceased has been withdrawn then the claim of the writ petitioner could not have been rejected on the ground that more than 19 years have passed and there was no immediate need for compassionate appointment vide order dated 09.11.2021. Submission is that earlier the claim for grant of compassionate appointment to the elder sister of the writ petitioner Km. Archana Chaudhary was negated on the premise that the vacancies are not available and now when the writ petitioner has attained majority his claim has been rejected on the premise that more than 19 years have passed since the death of the father of the writ petitioner which is not legally justified. In a nutshell, it is submitted that there are sufficient materials available on record so as to suggest that the family of the deceased needs compassionate appointment as it has virtually become impossible to meet the both ends and the family is in destitution.

10. Additionally, it has been argued that discrimination has been meted to the writ petitioner particularly in view of the fact that there happens to be various illustrations wherein compassionate appointment has been accorded in the year 2022 when the death of the deceased occurred in the year 2004 to 2011 respectively. Contentions is that the respondents are not adhering to a uniform policy and they are adopting different yardsticks according to their sweet will in order to perpetuate favouritism and illegality. It is, thus, prayed that the writ petition be allowed and the order impugned in the present proceeding be set aside.

11. Countering the submission of the learned counsel for the writ petitioner, Sri Rajiv Sharma who appears for the second and the third

respondents as well as Sri Ishan Shishu has put in appearance on behalf of first respondent, Union of India have submitted that the judgment and order of the Tribunal impugned in the writ petition does not call for interference. It is submitted that the basic principle of compassionate appointment is to provide succour to the dependents of the deceased family and it is not an alternate source of employment. Submission is that the father of the writ petitioner expired on 26.11.2002 and the elder sister of the writ petitioner, Archana Chaudhary applied for compassionate appointment on 22.07.2003 which was not acceded to on 14.02.2005, once, she did not challenge the said order and accepted the same then post attainment of majority it is not open for the writ petitioner to apply for compassionate appointment as vacancies cannot be reserved for future for the dependents of a particular deceased as there are large number of claimants for compassionate appointment. It is also submitted that the claim of compassionate appointment of Archana Chaudhary, the elder sister of the writ petitioner was also considered on different occasions from the year 2004 to 2012, however, on account of non availability of vacancies, the benefit of compassionate appointment could not be extended.

12. Reliance has also been placed upon the provisions of Standing Orders No. 1602 dated 15.03.2002 of Khadi and Village Industries Commission so as to contend that once the ward is below 18 years at the time of the death or retirement of a deceased employee, a formal application should be made within six months from the death/retirement and a detailed application be made immediately on completion of 18 years by the ward/near relative and if no such application is received within three months after completion of 18 years no request will be entertained thereafter. It is, thus, contended that in the case of the writ petitioner for compassionate appointment cannot be considered.

13. We have considered the submissions made by the learned counsel for the parties and have perused the material available on record.

14. The facts are not in issue. It is not in dispute that the father of the writ petitioner, Hare Krishna (since deceased) while working as Assistant Development Officer expired on 26.11.2002. It is also not in dispute that the deceased left, three sisters and the writ petitioners out of which Km. Rachna Chaudhary and Shradha Chaudhary were minor along with the writ petitioner and Km. Archana Chaudhary was major who applied for grant of compassionate appointment on 22.07.2003 her request was not acceded to on 14.02.2005 on the ground that there were no vacancy available for grant of compassionate appointment. The said order attained finality as the same was not subject matter of challenge. However, the writ petitioner on attaining majority applied for compassionate appointment on 14.06.2010 and on 02.08.2010, the claim of the writ petitioner stood negated by the Director (B.T.), Khadi and Village Industries Commission on the ground that elder sister of the writ petitioner, Km. Archana Chaudhary's claim for compassionate appointment was not acceded to and there was no post available against which the writ petitioner can be granted compassionate appointment. The said order also attained finality as the writ petitioner did not question the same, however, on 21.07.2018 after a gap of 8 years, the writ petitioner on gathering knowledge of an advertisement being published by the respondents on 22.10.2017 for filling up Group-C and D posts preferred an application for compassionate appointment on 21.07.2018 to which a communication was issued on 06/08.08.2018 by the Director (Administration & HR) mentioning therein that the advertisement dated 22.10.2017 had been withdrawn and the claim of the writ petitioner elder sister of the writ petitioner K. Archana Chaudhary is still pending and subject to availability vacancies her claim may be considered, followed by

another communication dated 10.09.2018 of Director (Administration & HR). Though, there are certain communications such as 29.05.2019 of the Director (HR) and 10.02.2020 of Assistant Director-I (Administration & HR) requiring the writ petitioner to submit certain documents, but the moot question which falls for determination in the present proceeding is whether after a period of approximately 19 years of the death of the deceased, Hare Krishna, it would be appropriate to direct for compassionate appointment. The answer obviously would be "No" particularly in view of the intervening facts that the elder sister of the writ petitioner who was major who was looking after the family since the mother of the writ petitioner also died along with the father of the writ petitioner on 26.11.2002, her claim for compassionate appointment was not acceded to on 14.02.2005 and the said order was not subject of challenge by her meaning thereby, that she accepted the same.

15. Evidently, the writ petitioner post attainment of majority applied on 14.06.2010 for grant of compassionate appointment, however, his claim came to be negated on 02.08.2010 on two grounds firstly, non availability of vacancies, secondly, the application for grant of compassionate appointment of the elder sister of the writ petitioner Km. Archana Chaudhary is pending considering. The said order interestingly was not challenged by the writ petitioner and no proceedings was even drawn by the elder sister of the writ petitioner, Archana Chaudhary. However, after a period of approximately 8 years, on 21.07.2018 the writ petitioner preferred an application for grant of compassionate appointment which also came to be turned down on 06/08.08.2018, 10.09.2018 while holding that the claim for compassionate appointment of the sister of the writ petitioner, Km. Archana Chaudhary is pending and there is no post available as the advertisement dated 22.10.2017 came to be withdrawn. At that stage also neither the writ petitioner nor Km. Archana Chaudhary

questioned the said orders, however, alleging non-disposal of the representation dated 10.03.2021 the O.A. came to be preferred, O.A. No. 330/00716/2021 (Devendra Kumar Vs. Union of India) which came to be disposed of on 24.09.2021 requiring the Director (Administration & HR), second respondent to decide the claim which came to be rejected on 09.11.2021.

16. The basic object of compassionate appointment is to provide succor to the dependents of the deceased family and it cannot be an alternate source of appointment granting benefits after lapse of several years. The Hon'ble Supreme Court in the case of **Fertilizers and Chemicals Travancore Ltd. and others Vs. Anusree K.B. AIR 2022 Supreme Court 4766** was pleased to observe as under:-

"9.1 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided."

17. Yet in recent decision in the case of **State of West Bengal Vs. Debabrata Tiwari and Others Etc. Etc. AIR 2023 Supreme Court 1467**, it was held as under:-

" 10. Applying the said ratio to the facts of the present case, we hold that the Respondents-Writ Petitioners, upon submitting their applications in the year 2006-2005 did nothing further to pursue the matter, till the year 2015 i.e., for a period of ten years. Notwithstanding the tardy approach of the authorities of the Appellant-State in dealing with their applications, the Respondent-Writ Petitioners delayed approaching the High Court seeking a writ in the nature of a mandamus against the authorities of the State. In fact, such a prolonged delay in approaching the High Court, may even be regarded as a waiver of a remedy, as discernible by the conduct of the Respondents-Writ Petitioners. Such a delay would disentitle the Respondents-Writ Petitioners to the discretionary relief under Article 226

of the Constitution. Further, the order of the High Court dated 17th March, 2015, whereby the writ petition filed by some of the Respondents herein was disposed of with a direction to the Director of Local Bodies, Government of West Bengal to take a decision as to the appointment of the Respondent-Writ Petitioners, cannot be considered to have the effect of revival of the cause of action".

18. As regards, the submission of the learned counsel for the writ petitioner that discrimination has been meted to the writ petitioner as in the case of the writ petitioner a ground has been taken that after a period of 19 years of the death of the deceased compassionate appointment cannot be granted to the dependents but on the other hand, as per the own saying of the respondents, compassionate appointment has been granted to the dependents of the deceased in the year 2022 when the death occurred in the year 2004 and 2011 respectively. Though, the writ petitioner might be correct to some extent while contending that compassionate appointment has been accorded after a lapse of time in certain cases, however, the same cannot be made a basis for grant of relief to the writ petitioner particularly when the same is in the direct teeth of the principles of law culled down by the Hon'ble Supreme Court in the above noted decisions. As a matter of fact, the law does not contemplate negative equality. The writ petitioner in order to claim relief has to stand on his own legs. Records further reveal that a committee stood constituted for grant of compassionate appointment and out of the total vacancies being 488 in number, 5% of the same was earmarked for compassionate appointment being 24.40 (rounded to 24) vacancies and against the same out of 149 applications, 56 applications were found to be worth consideration and after scrutiny appointments were accorded. The candidates who have been accorded compassionate appointments are neither made party respondents in the present proceedings nor any challenge has been raised in that regard. In absence of impleading them as party and challenging their appointments this Court cannot delve into the said issue particularly

when it is the consistent stand of the respondents that there are no post lying vacant against which the claim of the writ petitioner can be considered.

19. Viewing the case from all the angles, we are of the firm view that the writ petitioner has miserably failed to show manifest illegality committed by the Tribunal while declining relief to the writ petitioner so as to warrant interference in the present proceedings.

20. With the above observations, the writ petition is **dismissed**.

Order Date :- 3.9.2024

Rajesh

(Vikas Budhwar, J) (Arun Bhansali, CJ)